IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.1797 of 2002

S. Velayudhampillai .. Appellant

vs.

The Special Officer
Kallakurichi II Co.operative Sugar
Mills Limited C.S.11
Kallakurichi 606 202. .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.12731 of 2001 dated 14.09.2001. Presented under Art 226 of the Constitution of India praying this Court to issue a writ of Mandamus forbearing the respondent herein from deducting Rs.12.50 per ton of the Sugar cane supplied by the petitioner to the respondent herein.

For appellant : Mr. Prateep Kumar
Mr. T. Dhanya Kumar

For respondent : Mr. P. Subramanian
Government Advocate

..

JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 14.09.2001 made in W.P.No.12731 of 2001, a share-holder of Kallakurichi II Co.operative Sugar Mills has filed the above writ appeal.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. According to the petitioner, he is a member for the last 11 years, owning 6 fully paid up ordinary shares of Rs.200/- each in the respondent Sugar Mills. The shares were registered by the

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respondent on 24.09.1991. He is owning 10 acres of wet agricultural lands and substantial portion of his lands was registered with the respondent Sugar Mills for the purpose of cultivating sugarcane. The respondent Sugar Mills has nearly 3000 registered agriculturists attached to it. Normally, the respondent used to pay to the agriculturist for procurement of sugarcane nearly after 2 or 3 years. There is huge amount due as arrears from the respondent Sugar Mills.

4. Recently, the respondent started deducting Rs.12.50 for every tonne of sugar cane supplied by the agriculturists. The petitioner is supplying nearly 500 tons every year and roughly he will be losing Rs.6,250/- per year. In the same way, 3000 members attached to the Sugar Mills will also be losing huge money. The petitioner and other members questioned the authority of the respondent for the same but there is no proper answer. Hence, having no other remedy, the petitioner approached this Court by way of this writ petition seeking a writ of Mandamus, forbearing the respondent Sugar Mills from deducting Rs.12.50 per tonne of the sugarcane supplied by him.

5. The learned single Judge, placing reliance on the Bye-law No.25 (viii), which enables the Sugar Mills to deduct not less than Rs.7.50 per tonne of sugarcane delivered to the Mills during every season, dismissed the writ petition with an observation that the petitioner is free to initiate arbitration proceedings before the competent authority. Questioning the said order, the writ petitioner has filed the above writ appeal.

6. Heard Mr. Prateep Kumar, learned counsel for the appellant and Mr. P. Subramanian, learned Government Advocate for the respondent.

7. The only point for consideration in this appeal is, whether the respondent Sugar Mills is authorised/justified in deducting a sum of Rs.12.50 per tonne of sugarcane supplied by the petitioner?

8. The Chief Accountant of the respondent Co.operative Sugar Mills filed a counter affidavit in the appeal furnishing several details and the following particulars in paragraphs 7 to 10 and 12 are relevant:-

> " 7. I respectfully submit that the sugar mills had entered into an agreement on 13th December 1995 with the Industrial Finance Corporation of India Ltd., to avail to term loan for the sum of Rs.1540.00 lakhs for financing the project of the mills. This agreement was made by the sugar mills based on its borrowing powers as per the terms of the Bye-law. As per the terms and conditions

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stipulated by the financial institution, the mills shall deduct non-refundable deposit @ Rs.12.50 per MT of cane supplied from the members. The amount so deducted shall not be refunded but shall be held to the credit of the members as deposit until it accumulates to Rs.200/- or a multiple thereof when it shall be credit to his shares. The amount so deducted shall be utilised for the development of cane area, repayment of loans and for development of business activities. The entire term loan with interest due to this Financial Institution was fully repaid during 2005-06 season. Upto the repayment this term loan Rs.12.50 per MT was deducted as per terms of the Bye-law of sugar mills.

8. I respectfully submit that as per clause 25 (viii) of the Bye-law of the sugar mills, the mill may deduct from the amount due to a member for the cane supplied by the members not less than Rs.7.50 per MT of sugarcane supplied by the members tot he mills during every season. The amount so deducted shall not be refunded but shall be held to the credit of the members as deposit until it accumulates to Rs.200/- or a multiple thereof when it shall be credited to his shares.

9. I respectfully submit that the non-refundable deposit and the share capital accumulated in this manner shall be applied by the mills as follows:1. For meeting the residual capital expenditure, 2. for meeting the liabilities towards Financial Institution, State Government or Central Government, 3. for redemption of share held by the Government of Tamilnadu, Co.op. And other institutions, 4. for other purpose in such manner as may be prescribed in the regulations framed by the board for the purpose with approval of the Registrar. The deduction of non-refundable deposit will cease on full repayment of loan borrowed from the Central or State Financial Institution with the approval of Registrar.

10. I respectfully submit that the borrowings outstanding as on 31.03.2007 is as follows:

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I.Government of Tamilnadu(Rs. In lakhs)	
1.Share Capital-Government of Tamilnadu	1332.50
2.Open Market borrowings loans - Govt.of Tamilnadu	2158.00
3. Ways & Means loans - Govt. of Tamilnadu	480.00
II Financial Institution - NCDC	
1.Working Capital Term Loan	542.00
2.Sugar Godown Loan	52.05
Total	4564.55

12. I respectfully submit that upto the accounting year 2005-2006, 1,76,460 NRD shares were issued to the members and Rs.352.52 lakhs were credits to the members share capital @ Rs.200/- per each NRD share."

9. The above details make it clear that first of all the Bye-laws of the Society, viz., Sugar Mills, empower it to deduct, from the amount due to a member for the cane supplied by him, a sum not less than Rs.7.50 per MT of sugarcane during every season. The amount so deducted shall not be refunded but shall be kept to the credit of the member concerned as deposit until it gets accumulated to Rs.200/- and in multiple thereof, and then it will be credited to his share capital. It further shows that the Non-refundable Deposit (NRD) and share capital accumulated in this manner shall be applied by the Mills for meeting the residual capital expenditure if any under the Scheme and for meeting the liabilities towards All India Financial Institutions and other State or Central Industrial and Financial Corporations, and also for the redemption of shares held by the Tamil Nadu Co.operative and other institutions and for the purpose of various schemes framed by the Board and duly approved by the Registrar.

10. In the case of writ petitioner S. Velayutham Pillai, it is stated that he was admitted as a Member on 24.09.1991 and till the accounting year 2005-06, 89 Nos. of NRD shares were issued to him and a sum of Rs.17,800/- was credited to his share capital at Rs.200/- per NRD share. It is further stated that during 2006-2007, the petitioner supplied 68 MTs. so far, and Rs.510/- was recovered as NRD @ Rs.7.50 per MT.

11. It is therefore clear from the particulars furnished in the counter affidavit that the Mill has collected NRD from the Members and converted the same into shares to the credit of the

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respective members in accordance with the terms of the Bye-laws. As rightly pointed out by the learned counsel for the respondent, there is no loss caused to the Members by the collection of NRD. The Chief Accountant has also asserted that the Mills has utilised this amount only in accordance with the terms of bye-laws and the petitioner/appellant herein being a member of the institution is bound by the bye-laws of the Sugar Mills. We are satisfied with all those details. As rightly pointed out, the deduction on supply of sugarcane is legal and as per the bye-laws of the sugar mills.

Under these circumstances we do not find any merit in the appeal and the same is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Special Officer
Kallakurichi II Co.operative Sugar
Mills Limited C.S.11
Kallakurichi 606 202.

+ 1 cc to Mr. T. Dhanyakumar, Advocate, SR No.14215

+ 1 cc to Mr. P. Subramanian, Advocate, SR No.14040

Judgment in

W.A.No.1797 of 2002

KSJ(CO)
SR/16.3.2007

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